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January 24, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 7, 2005

Case Number: TSO-0259

This decision concerns the eligibility of XXX XXXXX XXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Alcohol Abuse. The Individual does not dispute this diagnosis. Instead, the Individual asserts that he has mitigated the security concerns raised by his Alcohol Abuse. Transcript of Hearing, Case Number TSO-0259 (Tr.) at 4-5.

The events leading to this proceeding began when the Local Security Organization (LSO) received information indicating that the Individual had been arrested for Driving While Intoxicated (DWI).² A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On November 24, 2004, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. On November 30, 2004, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for alcohol abuse, as set forth in the Diagnostic and Statistical Manual of Mental

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The Individual had previously been arrested for Public Intoxication (PI).

Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 10-12. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Alcohol Abuse.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has “. . . been diagnosed by a board-certified psychiatrist . . . as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual has: “an illness or mental condition of a nature which, in the opinion of a psychiatrist . . . causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H).³ The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer. At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented six witnesses: his girlfriend (with whom he lives), his step-father, his brother, his supervisor, a co-worker who is also a close friend, and his substance abuse counselor (the Counselor). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

On April 6, 2003, the Individual was arrested for Public Intoxication. The Individual reported this arrest to the LSO. On July 8, 2003, at the LSO's request, a PSI of the Individual was conducted. During this PSI, the Individual stated that he intended to refrain from excessive

³ The DOE Psychiatrist testified that Alcohol Abuse is an illness or mental condition that “causes or may cause a significant defect in judgment or reliability.” Tr. at 126.

alcohol use in the future.⁴ Transcript of July 8, 2003 PSI at 23. In addition the Individual enrolled in an Intensive Outpatient Program (IOP) designed for the treatment of alcohol related disorders. A Forensic Psychiatric Evaluation of the Individual was performed by the DOE Psychiatrist. On September 18, 2003, the DOE Psychiatrist issued a report in which she stated that she did not find that the Individual had any substance related issues or significant mental disorders. This report resolved the original security concerns raised by the Individual's April 6, 2003 arrest for public intoxication, for the time being.

On April 22, 2004, the Individual was arrested for Driving While Intoxicated (DWI). A second PSI of the Individual was conducted on July 1, 2004. This PSI did not resolve the security concerns raised by the Individual's DWI and Public Intoxication arrests. Accordingly, the Individual was re-examined by the DOE Psychiatrist on November 24, 2004. In addition to conducting this re-examination, the DOE Psychiatrist reviewed selected portions of the Individual's security case file. On November 30, 2004, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for Alcohol Abuse as set forth in the DSM-IV-TR and further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Alcohol Abuse. DOE Psychiatrist's Report of Examination at 10-12.

The Individual does not dispute the DOE Psychiatrist's diagnosis of Alcohol Abuse. A finding of derogatory information does not, however, end the evaluation of evidence concerning the Individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his alcohol abuse. After considering all of the evidence in the record, I find that he has not.

In her Report, the DOE Psychiatrist states:

As adequate evidence of rehabilitation. [The Individual] could do either one of the following: a) Go through a second course of intensive outpatient treatment for alcohol abuse and complete aftercare recommendations for a minimum of six months, followed by abstinence from alcohol for another six months after completion of [an] aftercare program. [or] b) Weekly individual psychotherapy for at least three months, followed by at least six months of maintenance psychotherapy on a less frequent basis as recommended by a qualified therapist.

⁴ The Notification Letter, at ¶ C.4, alleges that the Individual verbally committed to refrain from using alcohol in the future during this PSI. However, the transcript of the PSI clearly indicates that the Individual only indicated that he intended to refrain from **excessive** alcohol use. Transcript of July 8, 2003 PSI at 23.

The individual must be abstinent from alcohol for a minimum of three months following nine months of therapy.

a) If the individual participates in any of the rehabilitation requirements above, one year of absolute sobriety is evidence of adequate reformation. b) If the individual does not participate in any of the rehabilitation requirements above, two years of absolute sobriety is evidence of adequate reformation.

DOE Psychiatrist's Report at 12 (emphasis in the original).

The Record shows that, *at the time of the hearing*, the Individual had not (a) completed a second course of Intensive Outpatient Treatment for Alcohol Abuse, (b) completed three months of weekly individual psychotherapy, or (c) abstained from using alcohol for a two year period. Accordingly, even though the Individual had made important strides towards addressing his Alcohol Abuse, he had not yet met the treatment recommendations of the DOE Psychiatrist. The Individual has not presented any compelling evidence or argument showing that the DOE Psychiatrist's treatment recommendations were unreasonable or otherwise flawed. Therefore the remaining question is whether, at the time of the Hearing, the Individual had made enough progress in addressing his Alcohol Abuse disorder to merit finding that the Individual is rehabilitated or reformed, notwithstanding the terms of the DOE Psychiatrist's Report.

The Individual has testified that he had attended an Intensive Out-patient Program (IOP) for substance abuse at a local hospital. Tr. at 62-63. The Individual further testified that he had successfully completed the IOP. Tr. at 63. The Individual began attending an aftercare program in the summer of 2005. Tr. at 72-73. The Individual testified that, as a result of attending this program, he has observed the negative effect that alcohol can have on some persons' lives. Tr. at 74. The Individual testified that he was determined to avoid suffering the same fate. Tr. at 74. The Individual testified that he has become educated about "genetic loading" and realizes that he is at high risk for substance abuse disorders because both of his parents had substance abuse disorders. Tr. at 77-78, 87. The Individual testified that he is a better, happier, person because of his aftercare program and avoidance of alcohol. Tr. at 79. The Individual testified that he has mellowed and matured during the past two years. Tr. at 78-79. The Individual testified that he intends to avoid alcohol use in the future. Tr. at 77. The Individual testified that he has a strong support system in place, consisting of his girlfriend of three years, as well as his friends, his step-father and siblings. Tr. at 85-86. The Individual now recognizes the need to use his support group more extensively. Tr. at 92. The Individual testified that he recognizes that alcohol poses a threat to him. Tr. at 96. Most importantly, the Individual convincingly testified that he has abstained from using alcohol since his April 22, 2004 DWI. Tr. at 70-71, 76-77.

The Individual's step-father, brother, girlfriend, friend and supervisor each testified that the Individual has refrained from alcohol use in their presence. Tr. at 7, 19, 21, 24, 31, 37, 41, 51, 53-54. The girlfriend's testimony on this matter is especially important, because she has lived with the Individual for the past three years. The Individual's step-father, brother, girlfriend,

friend and supervisor each testified that the Individual has matured and mellowed over the past two years. Tr. at 9, 19-20, 22, 24-25, 31-32, 36, 42, 52-53, 55. Moreover, the Individual's girlfriend, brother and father each provided testimony indicating that the Individual has resolved to abstain from future alcohol use. Tr. at 18-19, 21, 42-43, 50-51.

The Individual also presented the testimony of the Counselor who supervises and implements his aftercare program.⁵ Tr. at 106. The Counselor testified that the Individual has been attending his aftercare program twice a week for three months. Tr. at 111. The Aftercare Program is an Alcoholics Anonymous-based program geared towards maintaining sobriety and avoiding relapse. Tr. at 109, 113. Under this program, the Individual participates in group counseling sessions. Tr. at 111-12. The Counselor believes that, as a result of this program, the Individual now has some tools to manage stress. Tr. at 123. The Counselor testified that the program is benefiting the Individual and opined that the Individual's risk of relapse is low. Tr. at 115, 117.

The information discussed above shows that the Individual has made considerable progress towards reformation and rehabilitation of his Alcohol Abuse disorder. However, I am of the opinion that the Individual is not sufficiently reformed or rehabilitated, at this time, to resolve the security concerns arising from his Alcohol Abuse disorder. This conclusion is based largely upon the testimony of the DOE Psychiatrist. The DOE Psychiatrist was present during the entire hearing to observe the testimony of the Individual and each of his witnesses. After the Individual and each of his witnesses had testified, the DOE Psychiatrist was called to testify by the DOE.

The DOE Psychiatrist testified correctly that, as of the date of the Hearing, the Individual had not yet met the standards for rehabilitation or reformation set forth in her 2004 Report. Tr. at 127, 147. The DOE Psychiatrist was not of the opinion that her original recommendations should be changed. Tr. at 135. She testified that the Individual had made some positive changes and had an improved support system which he is now more willing to use. Tr. at 133, 135. However, she remains concerned about the Individual's lack of insight. Tr. at 130. As evidence in support of her conclusion that the Individual's insight and understanding are insufficient, the DOE Psychiatrist cited the Individual's testimony that: (1) he did not use alcohol as a stress reliever, (2) he does not have a problem with alcohol and (3) alcohol abuse is a moral issue rather than a physical illness. Tr. at 132 and 146. The DOE Psychiatrist's testimony is highly convincing and credible. I too, was left with the impression that the Individual neither fully recognizes the danger alcohol poses to his future nor fully understands his own Alcohol Abuse disorder. Accordingly, I find that the Individual has not resolved the security concerns raised under Criteria J and H.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that

⁵ The Counselor has a Bachelor's Degree in Education and an Associate's Degree with a focus in Substance Abuse. Tr. at 105.

restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 24, 2006